



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **ACTION:** Wetland Banking and Banking Agreements

Date: APR 22 1993

From: Director, Office of Environment and Planning

Reply to
Attn. of: HEP-42

To: Regional Federal Highway Administrators
Federal Lands Highway Program Administrator

FHWA Headquarters continues to support wetland banking and participation in wetland banking agreements and projects wherever feasible and practicable. In most cases, wetland banking projects have been successful from a biological standpoint, and have facilitated the development of highway and transportation projects.

The purpose of this memo is to provide State-by-State information on the status of wetland banking and to provide recommendations for each region on further efforts to advance wetland banking (attached). The text and tables were reviewed by environmental staff in each regional office.

Overall, the use of wetland banks is increasing and improving, but continued efforts by FHWA headquarters and field offices will be needed to reach the true potential of wetland banking. Although a number of States have multi-agency banking agreements in place, most do not include signatory participation by the Corps of Engineers. Many States are currently pursuing banking agreements, and several new agreements are expected to be finalized this year. In a few cases, State environmental agencies or administrations have expressed opposition to wetland banking or banking agreements, and several States have enacted legislation which prohibits wetland banking in most forms.

As updates on the status of various agreements are known, please provide the information to Paul Garrett of my staff at (202) 366-2067 or EMAIL-PGARRETT. We intend to release updates periodically with the next release scheduled for January 1, 1994. We appreciate the assistance and cooperation from all of those individuals providing information.



Kevin E. Heanue

Attachments

FHWA:HEP-42:PGarrett:zl:4/13/93
Disk:Paul, File name:BANKSTAT.MEM
cc: HEP-1, HEP-40, HEP-41, HEP-30,
HEP-31, HEP-32, HEP-42/Files(2)

HOW ARE THEY DOING?

Status of Wetland Banking Agreements & Activities

Region 1

Region 1 held an Environmental Workshop in October 1992, which included a section on wetland banking. Federal resource management agencies have published coordinated "Draft Guidelines for Wetlands Banking" for the New England area. The Regional Environmental Coordinator recommended visits to all State and Division Offices to identify barriers and find solutions.

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| Connecticut | Connecticut Department of Transportation (DOT) mitigates on a project by project basis. The DOT is interested in developing a wetlands banking agreement, but is delaying action until after revision of State wetlands policies. Currently an inventory of State wetlands resources is available, which the DOT funded with the Department of Environmental Protection (DEP). They are also involved in the Coastal America project, which could result in wetland banking opportunities. |
| Maine | Maine DOT has tried banking in the past using excess right-of-way. State resource agencies are not supportive of this approach to wetland mitigation or banking. The DOT is working with the DEP to fund a position in DEP to work on highway projects. |
| Massachusetts | Massachusetts mitigates project by project. State law prohibits the State wetlands management agency from participating in banking agreements or projects, as it specifies on-site, in-kind mitigation. The State DOT wants to pursue wetland banking. |
| New Hampshire | New Hampshire has held interagency meetings to discuss wetland mitigation concepts, and has developed a first draft mitigation banking agreement. A survey of potential sites for banking has been initiated. Distribution and review of the draft memorandum of agreement (MOA) is expected during 1993. |
| New Jersey | New Jersey is pursuing a wetlands banking agreement. The New Jersey Wetlands Council, FHWA, and other State agencies have approved the agreement, but concurrence has not been obtained from Federal resource agencies. The EPA Region 2 Office is conducting an interagency coordination meeting which will include a discussion of wetland banking/section 404 issues. FHWA Headquarters assistance has been requested. |

New York	New York DOT has discussed wetlands banking with the Corps of Engineers (COE) and State resource agencies. No agreement has been reached to go ahead with development of a draft MOA. The NY COE Office is relocating under the planned reorganization. It may not be possible to implement a comprehensive interagency agreement until the relocation is complete and new areas of responsibility established.
Puerto Rico	Division/DOTHA is interested in developing a banking agreement, but have not pursued interagency meetings to date.
Rhode Island	Rhode Island DOT has held informal discussions with resource management agencies to identify potential banking benefits and problems. To date, there has been no agreement on objectives and guidelines.
Vermont	Although VT DOT is not involved in negotiating a banking agreement at this time, the DOT and Department of Natural Resources (DNR) wetland biologists both support banking. The DOT and DNR both encourage development of a banking arrangement. State law does not preclude wetlands banking.

Recommendations:

- *FHWA assist New Jersey in resolving Federal agency conflicts by initiating interagency coordination meetings at the regional or headquarters level.*
- *Regional banking meeting be held/encouraged to discuss draft guidelines, ISTEA, State transportation programs, and local/regional wetlands management issues and plans.*

Region 3

The Regional Unit Operating Plan identified wetlands banking as an area of special concern and emphasis, with the objective of complete interagency banking agreements in the five States. Target dates are October of this year in Virginia and Maryland, and October 1994 for Pennsylvania, West Virginia, and Delaware. A specific interagency banking workshop is not being planned at this time. However, informal meetings will be pursued with other Federal and State agencies and with the Division Offices.

Delaware	Delaware has expressed interest in developing a comprehensive wetland banking agreement and has been provided reference material on wetland banking procedures and advantages. This is being followed up by the Division and Region Offices.
Maryland	Maryland has a banking agreement in the final stages of completion, with general agreement from other Federal and State agencies. Final approval is anticipated in 1993.
Pennsylvania	The State Administration opposes a general banking agreement at this time. Mitigation will continue on a project/project basis.
Virginia	Virginia has a banking agreement drafted that has been reviewed with comments by Federal and State agencies. The final approval of the agreement is being delayed pending additional reviews.
West Virginia	West Virginia DOT and FHWA Division Office are considering a feasibility study of wetland banking. A general banking agreement is not under immediate consideration.

Recommendations:

- *A section on Wetlands Banking should be integrated into the next Regional Environmental Workshop.*
- *Discussions between Delaware DOT, Delaware State Environmental Management agencies, and concerned Federal resource management agencies should be encouraged to fully investigate the potential benefits of a wetlands banking approach.*
- *Pursue additional discussions with Pennsylvania agencies to determine positions on banking and investigate potential for environmental benefits, based on projected transportation needs.*

Region 4

The Region is not pursuing a Banking Workshop at this time due to workload and new personnel. Region would support a workshop initiated by Headquarters at the regional level. The next environmental workshop will include a section on Wetlands Banking. Informal meetings for coordination on wetlands issues will continue.

Alabama	Alabama is currently mitigating on a case by case basis. Alabama Highway Department and FHWA Division Office recently met with representatives of Alabama Waterfowl Association to discuss funding possibilities in ISTEA for cooperative wetland mitigation efforts, including banking.
Florida	Florida is meeting mitigation needs with case by case on-site mitigation. Florida DOT has an outstanding program, but the Department of Environmental Regulation has resisted banking. A pilot banking project with The Nature Conservancy is being pursued with interagency cooperation which could establish a new level of cooperation and benefits and serve as a regional example. This project involves both public and private entities.
Mississippi	Mississippi has a banking program in effect which is meeting their current needs.
North Carolina	North Carolina has a banking program which has met mitigation needs to date but has a need for additional banking credits. North Carolina has two large banks: (1) a well established preservation bank and (2) a newer bank restoring a previously degraded wetland area. They have problems with in-kind mitigation requirements and developing appropriate and feasible mitigation technology. They have done an outstanding job to date in pursuing mitigation banking opportunities.
Georgia, Kentucky, Tennessee, and South Carolina	These States are mitigating on a case by case basis. Wetlands issues and permit requirements have caused some project delay.

Recommendations:

- *This region would benefit by one or more interagency workshops on the potential of wetland banking as related to highway projects and other Federal activities, with a thorough discussion of future transportation developments and mitigation problems.*
- *The southeastern States have a high potential for mitigation through enhancement and restoration, as well as significant opportunities for preservation of critical wetlands, in particular bottomland hardwoods and unique wetlands such as pocosins.*
- *The potential cooperative project in Florida should be facilitated by all possible means. The project has the potential for national attention.*

Region 5

Minnesota has had a wetland banking program in place since 1984 and Wisconsin has an individual bank site established and is working closely with the resource agencies to complete a statewide system. Other States have held interagency workshops where banking was discussed. Wetlands and banking were also addressed at the recent FHWA Regional Environmental Workshop which was attended by Headquarters personnel and resource management agencies. The Federal wetlands management agencies in this region have developed generic wetland mitigation guidelines, but no banking programs based on these guidelines have been initiated to date. Wisconsin will probably be the first banking initiative under the proposed guidelines. Region 5 has not planned further banking workshops, but banking is always addressed in interagency environmental management workshops.

Illinois

Wetlands banking was addressed at the last interagency environmental workshop, and a banking working group meeting is planned in the near future to start working on a banking system. The Illinois Wetland Protection Act of 1989 (IWPA) required the Illinois Department of Conservation (IDOC) to prepare statewide wetlands rules for implementation of the act no later than 1990. IDOC still has not developed State rules to implement the act. The IWPA also required each State agency to prepare a Wetlands Action Plan for IDOC approval. Illinois DOT (IDOT) developed an action plan and submitted a conforming wetland banking agreement for review and approval by IDOC in January 1992. This proposed agreement has not been approved due to conflicts on compensation ratios (replacement acreage ratios). IDOC intends to develop its own compensation ratios, and will not approve IDOT's draft document. IDOT has two site-specific banks in the planning stage near Chicago and may try to go ahead with these without active participation by IDOC.

IDOT is pessimistic about establishing sufficient interagency cooperation to make an interagency banking agreement effective. Unofficially, IDOT believes that IDOC does not support the State wetlands law because it is not comprehensive and leaves too many wetlands without sufficient protection. For example, wetlands on private property are not addressed. In conclusion, IDOC's refusal to develop implementation procedures for the State law is holding back progress in developing banking agreements.

Indiana

Banking is addressed at interagency workshops, which are held on a regular basis. A late spring conference on banking is being planned for this spring. There is some disagreement between State agencies on the geographical areas to be covered by a bank.

The COE has suggested six major watersheds; the State agencies want much smaller areas. Indiana DOT is assembling information from other State DOT programs before setting up the workshop.

Michigan	The Michigan Department of Natural Resources is not interested in establishing wetland banks. However, the DOT continues to work at the State level to change the resistance to banking.
Minnesota	Minnesota DOT has a long standing banking program in effect. Has been effective in mitigating highway impacts. DOT has proposed and is funding regional wetland planning to improve diversity. One of the best programs in the country.
Ohio	Ohio DOT is expecting to hold wetland banking workshops this fall, not banking wetlands at this time.
Wisconsin	Wisconsin DOT has a proposal underway to establish a wetland banking system.

Recommendations:

- *A Regional Interagency Wetland Banking Workshop should be encouraged in this region, with participation by Federal and State resource management agencies. Potential for effective mitigation should be high.*
- *Regional planning for improved regional diversity and preservation of critical wetlands is needed in States such as Minnesota and Michigan. Minnesota DOT has initiated an active program with other State and Federal agencies trying to improve regional planning for wetlands. Urban wetlands play an important role.*

Region 6

Several States have banking programs either in effect or in the planning stage. The Region does not plan to hold additional banking workshops at this time.

Arkansas	An agreement has been drafted and reviewed. Project specific banks have been established that are exemplary mitigation. A good program.
Louisiana	Louisiana DOT has an active bank. The DOT may revise the banking program and agreements. Louisiana is one of the first States with a banking project.
New Mexico	Banking has been discussed. No formal action taken to date.
Oklahoma	Initial banking discussions are being held. No formal actions taken by DOT to date to initiate wetlands banking.
Texas	Texas DOT has draft banking agreement. The DOT has not obtained concurrence from all concerned agencies. There is a high potential for mitigation banking by enhancement, restoration, and preservation. Several potential banking sites have been informally identified which would contribute substantially to wetlands resources by enhancement or restoration.

Recommendations:

- *A section on Wetland Banking should be included in the next Regional Environmental Workshop.*
- *Oklahoma Division has taken some initiative in encouraging wetlands banking and should receive support in meeting with resource agencies to resolve problems related to banking.*

Region 7

A section of wetland banking was included in the 1992 Regional Environmental Workshop. Headquarters staff attended an interagency wetlands banking workshop that was held in Kansas City in January. There are no plans at this time to pursue State workshops.

Iowa, Kansas, and Missouri	These States are mitigating wetlands on a case by case basis. Missouri has investigated the possibility of mitigation banking, but has not obtained a consensus from State or Federal resource agencies on an appropriate approach or management responsibility.
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Nebraska	Nebraska DOT is working on a wetland mitigation banking agreement. They have obtained agreement from State resource management agencies, but EPA and COE have not concurred. FHWA has attempted to assist in resolving problems with the Nebraska Wetlands Banking MOA by action at the regional and headquarters level. The amended MOA has been resubmitted to the COE Regulatory Branch (Headquarters) for their review and comment. At this time, the COE has indicated a plan to model all DOT banking agreements in the Omaha District after the Wyoming DOT banking agreement, which is in the final stages of negotiation and approval. Omaha District has developed draft banking guidelines based on the Draft Regulatory Guidance Letter now under internal review by the COE.
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Region 8

A Regional Wetlands Banking Workshop is not planned at this time. Four States have established statewide wetland banking agreements and Colorado is working toward implementation of an interagency agreement. The Region Office has worked closely with Federal resource management agencies and regional planning groups to foster cooperation in developing wetland management plans and strategies, including mitigation banking. Wetlands in this region are especially important to North American waterfowl populations.

Colorado	Colorado DOT has developed a draft banking agreement for interagency review. They are participating in a regional wetlands planning group.
Montana	Montana DOT has a banking program in effect. The DOT has several outstanding examples of interagency cooperative mitigation through enhancement and restoration, and has a number of established wetlands in place. The State resource agency is currently pursuing a state-wide evaluation and inventory of mitigation activities. The COE is a non-signatory participant to the banking agreement.
North Dakota	North Dakota has a banking program in effect in cooperation with US Fish and Wildlife Service on Federal property and wetland protection easements. Effective mitigation is being obtained. This agreement is being considered for expansion to include wetlands impacted on wetlands owned by other agencies or individuals.
South Dakota	South Dakota has an interagency agreement on mitigation banking, which has been praised by the Omaha District of the COE as a good working model and is actively using mitigation banking. Multiple agencies have signed the agreement, but the COE is a non-signatory participant.
Utah	Utah DOT is not actively pursuing mitigation banking at this time.
Wyoming	Wyoming DOT has been negotiating a banking agreement with the Omaha District COE for several years. Recently the COE gave informal approval to a revised draft, which they have indicated will be used as a model for other State DOT. Wyoming DOT expects this agreement to be signed and operational by the summer of 1993.

Recommendations:

- *Wetlands banking should be addressed in Regional Environmental Workshop scheduled for May. Several sessions on banking should be held, including discussion of the COE draft regulatory guidance letter on banking and a presentation on water rights related to wetlands development.*

Region 9

Wetlands banking will be addressed at the Regional Environmental Workshop, to be held April 28-30. Regional discussions with the Division Offices indicate that banking-specific workshops will not be pursued either at the State or regional level.

California	A general statewide banking MOA, <i>Early Mitigation Planning for Transportation Improvements in California</i> , was approved by CalTrans, FHWA, and the section 404 regulatory and resource agencies in May 1991. CalTrans is currently developing specific mitigation banking agreement and conceptual restoration plans under the MOA for a 135-acre site along the Sacramento River in Sacramento County (excess I-5 R/W).
Arizona and Hawaii	These States have not established a need for Wetland Banking in their current highway construction programs.
Nevada	The FHWA Division Office is actively encouraging the development of wetland banking activities by NvDOT. Region and Division staff have met with NvDOT planners. NvDOT is convinced of an immediate need to pursue mitigation banking, but may wish to develop a banking agreement in the future based on an inventory of projected wetland impacts.

Recommendations:

None, pending results of 1993 Regional Environmental Conference.

Region 10

Regional or additional State workshops on wetland banking are not being pursued by FHWA at this time. States are actively developing wetland banking programs, either on a general MOA or case by case basis.

Alaska	Alaska DOT indicates a statewide program is not practical at this time; however, they have indicated an interest in wetland banking applied to urban areas and airport development. Also, at a recent 404/NEPA merger conference in Anchorage, the DOT, COE, and FHWA expressed interest in a wetland restoration bank for previously degraded wetlands associated with transportation projects.
Idaho	Idaho has a wetlands banking program and agreement in effect of which the COE is a non-signatory participant.
Oregon	Oregon DOT has implemented two project-specific wetland banks with interagency cooperation, including participation by The Nature Conservancy. Oregon has State legislation affecting wetland mitigation and the use of banking. The Oregon DOT does not propose to enter into a statewide wetland banking program at this time. They are interested in results of other States' programs to determine if statewide banking is appropriate.
Washington	Washington DOT is proceeding toward a wetlands banking agreement involving monitoring of mitigation sites by EPA. Implementation of the agreement is expected by the summer of 1993.

Recommendations:

None. Progress toward banking is satisfactory at this time.

GENERAL RECOMMENDATIONS AND COMMENTS.

- *All regions would benefit from regional or interagency banking workshops in which FHWA plays an active role.*
- *FHWA Regions are including wetland banking as a subject at Regional Environmental Workshops.*
- *National agreements or letters of cooperation with The Nature Conservancy and Ducks Unlimited would facilitate the potential for regional wetland planning and wetland mitigation. These agreements have been agreed to in principle by The Nature Conservancy, Ducks Unlimited, and FHWA Headquarters.*
- *The COE has completed an inventory of wetland banking activities which may facilitate the development of banking agreements and wetland banks by identifying successful banking projects and key factors in using the banking approach to mitigation.*
- *FHWA should continue to emphasize the objective of effective wetland mitigation, and the need to consider alternatives to conserve wetlands in the normal project design and construction process, as well as opportunities for banking. Often, banking is not the option of choice from an environmental standpoint, but needs to be effectively used when appropriate.*

STATUS OF WETLAND BANKING IN STATE DOTs

WETLAND BANKING IN PLACE		STATE DOT PURSUING WETLAND BANKING		STATE DOT NOT PURSUING WETLAND BANKING			
STATES	BANK WELL ESTABLISHED	RELATIVELY NEW BANK	NEGOTIATIONS WELL UNDERWAY	RELATIVELY NEW INITIATIVE	STATE LAW PROHIBITS	STATE AGENCIES NOT INTERESTED	LIMITED BANKING OPPORTUNITIES
REGION 1							
Connecticut				X			
Maine			X				
Massachusetts					X		
New Hampshire			X				
New Jersey			X				
New York				X			
Puerto Rico				X			
Rhode Island						X	
Vermont				X			
REGION 3							
Delaware				X			
Maryland			X				
Pennsylvania						X	
Virginia			X				
West Virginia						X	
REGION 4							
Alabama				X			
Florida						X	
Georgia						X	
Kentucky						X	
Mississippi	X						
North Carolina	X	X					
South Carolina						X	
Tennessee						X	

WETLAND BANKING
IN PLACE

STATE DOT PUR
WETLAND BANKING

STATE DOT NOT PURSUING
WETLAND BANKING

STATES	BANK WELL ESTABLISHED	RELATIVELY NEW BANK	NEGOTIATIONS WELL UNDERWAY	RELATIVELY NEW INITIATIVE	STATE LAW PROHIBITS	STATE AGENCIES NOT INTERESTED	LIMITED BANKING OPPORTUNITIES
REGION 5							
Illinois				X			
Indiana			X				
Michigan						X	
Minnesota	X						
Ohio				X			
Wisconsin			X				
REGION 6							
Arkansas	X						
Louisiana	X						
New Mexico						X	
Oklahoma				X			
Texas			X				
REGION 7							
Iowa						X	
Kansas						X	
Missouri				X			
Nebraska			X				
REGION 8							
Colorado		X					
Montana	X						
North Dakota	X						
South Dakota	X						
Utah						X	
Wyoming			X				

WETLAND BANKING
IN PLACE

STATE DOT PURSUING
WETLAND BANKING

STATE DOT NOT PURSUING
WETLAND BANKING

STATES	BANK WELL ESTABLISHED	RELATIVELY NEW BANK	NEGOTIATIONS WELL UNDERWAY	RELATIVELY NEW INITIATIVE	STATE LAW PROHIBITS	STATE AGENCIES NOT INTERESTED	LIMITED BANKING OPPORTUNITIES
REGION 9							
Arizona							X
California		X					
Hawaii							X
Nevada							X
REGION 10							
Alaska						X	
Idaho	X						
Oregon					X		
Washington			X				